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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.952 OF 2021
IN
CRIMINAL APPEAL NO.221 OF 2021

Sunil Ramdas Sonawane = APPLICANT

VERSUS

The State of Maharashtra = RESPONDENT

Mr.NV Gaware, Advocate for Applicant;

Mrs.DS Jape,APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI,J.

DATE : 29th April, 2021.

PER COURT :-

1. Heard learned Advocate and learned APP appearing for respective parties.

2. By this Criminal Application, the applicant prays for suspension of substantive sentences and releasing him on bail during pendency and final hearing of the Criminal Appeal.

3. The applicant is the original accused in Special Case No.06/2019, who has been convicted and sentenced by learned Special Judge/Sessions Judge, Ahmednagar, vide judgment and order dated 23.3.2021, thus, -

a) For the offence under Section 354-D of IPC, and sentenced to suffer R.I. for one year and to pay fine of Rs.5,000/-, in default, S.I. for three months;

b) For the offence under Section 11 punishable under Section 12 of POCSO Act, and sentenced to suffer S.I. for one year and to pay fine of Rs.5,000/-, in default, S.I. for three months;

. Both the sentences are ordered to run concurrently.

. It was ordered that fine amount (if recovered) the same be paid to the victim (PW 1).

4. It is vehemently submitted on behalf of the applicant that the applicant was on bail during trial and has not breached the conditions of bail and the learned Trial Judge has also suspended the sentence till 26.4.2021 and accordingly enlarged on bail. The applicant has been falsely implicated in the alleged crime. The evidence of the prosecution witnesses is full of omissions and contradictions, which caused great prejudice to the applicant. The testimony of the prosecution witnesses fell short in order to bring home the guilt of the applicant. The prosecution failed to examine any independent witness to substantiate the charges levelled against the applicant. The prosecution failed to prove date of birth of the victim and that victim was child at the time of the alleged incident. The testimony of the victim does not inspire confidence and cannot be believed. The material witnesses, who are necessary to unfold the prosecution case, have not been examined. The impugned judgment and order of the Trial Court is erroneous. The entire prosecution story is doubtful and not trustworthy. The

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learned Trial Judge has misread and misconstrued the evidence brought on record and erred in convicting and sentencing the applicant. The prosecution has utterly failed to prove charges levelled against the applicant/s by a cogent and reliable evidence on record and the conviction is not sustainable in law and facts of the case. The learned Advocate further submits that the appeal involves other legal points/issues, which the applicant/appellant intends to agitate and address them at the time of final hearing of the appeal and the applicant has every hope of success in the appeal. Consequently, the applicant prays for releasing him on bail by suspending the substantive sentences awarded by the learned Sessions Judge on such terms and conditions as this Court may deem fit and proper.

5. Per contra, learned APP strongly resisted the application and supported the reasons assigned by the learned Sessions Judge while convicting and imposing the sentences against the applicant. The entire evidence of the victim is duly corroborated by the contents of FIR (Exh.13) as well as her statement under Section 164 of Cr.P.C. at Exh.14 and in absence of any inherent lapse or any damaging admission, the evidence of the victim is found to be trustworthy and credible. The learned Sessions Judge has properly scanned scrutinized the evidence brought on record. It is, therefore, submitted that the application being sans merit, deserves to be dismissed and it be dismissed accordingly.

6. As it appears from the impugned judgment of the learned Sessions Judge, particularly the sentences, that have been awarded against the applicant for the offences, are the short-term sentences. In view of the

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decision in the case of Kiran Kumar Vs. State of M.P. - (2001) 9 SCC 211, benefit will have to be extended to the applicant-appellant, when he has demonstrated that the material and significant points raised by him in the appeal are required to be considered at the time of final hearing of the appeal. Further, the applicant was on bail, has not misused his liberty and he had also deposited the fine amount. In view of the matter, it can be said that a case is definitely made out for releasing the applicant on bail by suspending the substantive sentence during pendency and final disposal of the appeal. Hence, following order,-

ORDER

i. The Criminal Application stands allowed.

ii. The substantive sentence imposed on the applicant by learned Special Judge/Sessions Judge, Ahmednagar, vide judgment and order dated 23.3.2021 in Special Case No.06/2019, is hereby suspended till hearing and final disposal of the appeal.

iii. The applicant - be released on executing PR and SB of Rs.30,000/ with two sureties of Rs.15,000/- each.

iv. The applicant shall not commit any criminal activity.

v. The applicant shall remain present before the learned Trial Judge once in six months, till final hearing and disposal of

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the appeal, commencing from the date he tenders bail papers and, thereafter, the Trial Judge to fix dates for their subsequent appearances.

vi. In case of two consecutive defaults on the part of the applicant to remain present before the Trial Court, the Trial Court to inform this Court about the same and in that eventuality, the prosecution would be at liberty to file an application for cancellation of the bail granted to the applicant.

vii. Bail before the Sessions Court.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV